IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

SA.No. 846 of 1994(A)

AS.85/1991 of DISTRICT COURT, PATHANAMTHITTA
OS.122/1990 of SUB COURT, THIRUVALLA
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APPELLANTS:(APPELLANTS IN THE LOWER APPELLATE COURT - PLAINTIFFS 2 TO 4 IN THE TRIAL COURT)

*** 1. P.S.SUKUMARAN PILLAI, NEPHEW OF SANKARA PILLAI, RESIDING AT PUTHUMANA HOUSE, RAMAPURAM, KEERIKKAD (PO.) - D I E D - LR'S IMPLEADED:**

2. INDIRAMMA, D/O.LAKSHMIKUTTY AMMA, RESIDING AT ..DO...

3. KAMALA DEVI, D/O. LAKSHMIKUTTY AMMA, RESIDING AT ..DO..

***ADDL.4 TO 6 ARE IMPLEADED:**

***A4. HARISH P.S., S/O. LATE SUKUMARA PILLAI, SREECHAITRAM, KURIKKADU P.O., RAMAPURAM, ALAPPUZHA.**

***A5. K.RADHAMANIAMMA, W/O.LATE SUKUMARA PILLAI, SREECHAITRAM, KURIKKADU P.O., RAMAPURAM, ALAPPUZHA.**

***A6. SHYAMPRASAD, S/O.LATE SUKUMARA PILLAI, SREECHAITRAM, KURIKKADU P.O., RAMAPURAM, ALAPPUZHA.**

(*ADDL.APPELLANTS 4 TO 6 ARE IMPLEADED AS THE LRS OF THE DECEASED APPELLANT AS PER ORDER DTD. 9/10/98 IN CMP.NO.1826/98)

BY ADV. SRI.R.RAMADAS (ADDL.APPELLANTS A2 TO A6)

RESPONDENT:

THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, PATHANAMTHITTA.

BY GOVERNMENT PLEADER

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 28/09/2007 ALONG WITH SA NO. 876 OF 1994 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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M.SASIDHARAN NAMBIAR,J.

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S.A.Nos.846/94,876/94,877/94

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6/95

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Dated this the 28th day of September, 2007

JUDGMENT

Appeals are filed against the concurrent judgment in O.S.122/1990,123/1990,124/1990 and 125/1990 on the file of Sub Court, Thiruvalla by the respective plaintiffs. Defendants are the respondents. The suits were filed seeking recovery of possession of plaint schedule properties after demarcating the boundaries. Case of appellants was that plaint schedule properties originally belonged to Ezhumattoor Naithalloor Kovilakam as freehold and it vested in Kovilakam by virtue of royal neetus of 928,942,948, 972 M.E and 1072 M.E. There was dispute with regard to the kovilakam properties and the senior-most member of the family requested Maharaja of Travancore seeking assistance for management of the estate and Deputy Tahsildar, Tiruvalla was directed the management of Kaviyoor

Devaswom, as additional charge of Kovilakam properties and agreement was executed and registered by members of the Kovilakam in favour of the Government of Travancore on 5th Edavom 1072 which was later renewed and pursuant to the agreement properties of Kovilakam continued to be in the management and possession of Government of Travancore and in 1089M.E during the settlement proclamation of cherikkal lands, the settlement officers of the former state of Travancore treating the properties of Naithalloor Kovilakam as land assessable to sirkar tax, assessed the land of kovilakam and levied tax on them and karanavan of the Kovilakam instituted O.S.42/1089 M.E against the Dewan of Travancore, who represented the Government of Travancore seeking a declaration that lands of cherikkals are free hold jenmom lands not assessable to sirkar tax and suit was decreed on 30.12.1095 under Ext.A8 judgment and Government of Travancore challenged it in A.S.294/1096 M.E before High Court of Travancore and the appeal was dismissed by the Full Bench of High Court of Travancore as per judgment dated 30th Thulam 1098

and while so Government of Travancore issued a notification under section 4 of Travancore Forest Act 2 of 1068 M.E proposing to constitute an area of 2000 acres of land in Survey No.283 of then Manimala and Kallooppara villages as reserve forests and when the lands were surveyed, the actual area including the reserve forest was found to be only 1265 acres out of a total extent of 1592 and odd acres covered by survey No.283/1A and on the delimitation and bifurcation of villages the lands which originally formed part of Manimala and Kalloopara villages are included within the boundaries of perumpetty village. It was contended that Kovilakam divided the properties under Ext.A10 partition deed of 74/1107 M.E. and properties allotted to Uthram Thirunal Ramavarma Thampuran who executed Ext.A11 and A12, in favour of punnoose Oommen in respect of the land in survey No.283/1A with a direction to recover the properties from Government and appellants obtained the title as per Exts.A13 to A21 sale deeds and thereby they have title to the properties. It was also contended that as the portion of the land included

in survey No.283/1A came within the boundaries of reserve forest notified, the land came to the possession and control of the forest department of the State on 20.6.1970. The predecessors in interest of the appellants filed petitions before the State requesting to release possession of the lands. They were forwarded to the District Collector, Alappuzha for enquiry. After enquiry Tahsildar, Thiruvalla submitted a report to the Collector and appellants were directed to produce the judgment of various cases. After perusing the relevant records, District Collector sent a report to Chief Secretary on 21.1.1973 stating that the area of land in survey No.283/1A is lying outside the forest area and is available for release or assignment and Government directed appellants to resort to civil court. Appellants filed O.P.4945/1975 against that orderbefore the High Court and it was directed that the dispute be settled in a civil court. After sending notice under section 80 of CPC suits were filed seeking recovery of possession on the strength of title.

2.The State filed written statement disputing

the claim contending that the erstwhile Travancore Government had no necessity to enter into an Udampady and it was unilaterally executed by the Kovilakam and hence not binding on the successive Governments and even if there was any stipulation for surrender of the properties to the Kovilakam, such conditions are not enforceable under the relevant provisions of Transfer of Property Act. It was contended that State Government was never holding the properties as manager of Kovilakam and land in survey No.283/1 of Perumpetty village, measuring 1992.50 acres, is Valiyakavu reserve forest as per the settlement register. Out of it, an extent of 1265 acres fall within the boundaries of Valiyakavu forest and it is in the possession of the forest department and an extent of 327.50 acres in survey No.283/1 lies outside the boundaries of Valiyakavu forest. The documents relied on by appellants in the plaint are neither valid nor binding on the State. It was contended that the Kovilakam had no right to execute any such documents and the document are bereft of bona fides and by virtue of the documents appellants did not

derive any title or interest and therefore they are not entitled to the decree sought for.

3. Learned Sub Judge, on the evidence found that when the suit was pending an identical question was considered by this court in MS.A.1/1981 and under Ext.A29 judgment it was found that the documents of title claimed by appellants are not genuine and the royal neetus by which appellants are claiming title to their predecesors were fraudulently obtained and hence appellants are not entitled to claim title thereunder. All the suits were dismissed.

4.Appellants challenged the decree and judgment before District Court, Pathanamthitta in A.S.85/1991, 86/1991,87/1991,88/1991. Learned District Judge on reappreciation of evidence, found that Ext.A29 judgment of this court holding that the royal neetus are fabricated documents and when the historic documents establish that only cadjen leaves were available at the time when the royal neetus were executed and the royal neetus are seen in copper plates establishing that they are all fabricated documents confirmed that appellants

have no title and are not entitled to the relief sought for. The appeals were dismissed. Second appeals were filed challenging the judgment of the first appellate court confirming the findings of the trial court. Appeals were admitted formulating the following substantial questions of law.

1. Whether courts below were right in entering a finding regarding title by relying on Ext.A29 judgment, ignoring the Full Bench decision of Tranvancore High Court in A.S.294/1096.

2. Whether the Full Bench decision in A.S.294/1096 does not operate as res judicata regarding the question of title.

5. Learned counsel appearing for appellants and learned Government pleader were heard.

6. Though a substantial question on the bar of res judicata in view of the judgment in A.S.294/1096 M.E was formulated, neither the pleadings nor the judgment in those cases were produced in those suits. Without producing the pleadings and the judgment appellants cannot raise a plea of bar of res judicata. Therefore on that sole ground plea on res judicata is to be rejected.

7. It was pointed out by the learned counsel appearing for appellants and learned Government pleader that subsequent to the filing of the appeals Honourable Supreme Court set aside Ext.A29 judgment of this court in M.S.A.1/1981 and the appeal was remanded back to this court for fresh disposal. Therefore findings of courts below relying solely on Ext.A29 judgment will not stand. After remand M.S.A.1/1981 is now pending before this court. That appeal could not be heard, consequent to the death of several of the respondents in that appeal.

8. The learned counsel and the Government pleader, submitted that the judgment of the courts below basing on Ext.A29 alone will not stand in view of the subsequent decision of the Apex Court. The question whether appellants have title to the plaint schedule properties was decided by the courts below solely on the basis of Ext.A29 judgment. When Ext.A29 judgment was set aside and M.S.A.1/1989 stands remanded to this court, judgments of the courts below relying on Ext.A29 judgment cannot stand. As the question was not

decided on the other evidence, there is no alternative but to set aside the judgments of the courts below and remand the suits to the trial court.

Appeals are allowed. The judgment of the courts below are set aside. O.S.122/1990, 123/1990, 124/1990 and 125/1990 are remanded to the Sub court, Thiruvalla for fresh disposal in accordance with law. Parties are directed to appear before Sub Court, Thiruvalla on 6.11.2007. No costs.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A.NOs.846 /94,876/94,
877/94 & 6/95

JUDGMENT

28th SEPTEMBER,2007